IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.1030 OF 2006
IN
APPEAL FROM ORDER NO.759 OF 2006

Rizvi Land Developments Pvt.Ltd. ..Appellant

V/s.

The Muncipal Corporation of Greater Bombay ..Respondent

Rajiv Nihar A Ghag, advocate for appellant
Mr.A.Y.Sakhare,Senior Counsel with Mrs.Geeta Joglekar, advocate for B.M.C.

Coram : D.G.Karnik, J

Date : 9th November, 2006

P.C.

1. Heard learned advocate for the appellant and Mr.A.Y.Sakhare, Senior advocate for the respondent. Arguable case is made. Hence, the appeal is admitted.

2. As regards interim relief learned advocate for the appellant invited my attention to para3(c) of the Written Statement of the respondent. The respondent has admitted initial ownership of Mrs.Flory Fonseca under whom the appellant claims. According to the respondent, property vested in

them by reason of Section 88 of the Maharashtra Regional Town Planning Act, on sanction of the Town Planning Scheme. After vesting of property and possession of the property is required to be taken U/s.89 of the Maharashtra Regional Town Planning Act. The respondent is unable to state when possession of the property was allegedly taken. He submits, on instructions of the instructing advocate present, that there is no record with the respondent Municipal Corporation regarding taking of possession of the suit property. In the circumstances, the appellant is entitled for the interim relief.

3. The statement of the appellant that possession was never taken and it is in possession needs to be prima facie accepted at this stage. Hence, there shall be ad-interim relief in terms of prayer clause (b). It is clarified that this order of injunction shall not prevent the respondent Municipal Corporation from following due process of Law and taking possession of the property. Civil Application is disposed of.

(D.G.Karnik, J.)